



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 4

Freedom of Information Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to update its fee schedule for provision of services in disseminating information and records to the public to reflect changes in the types of services that are provided, changes in the costs of providing services, and to add other fees for new services.

DATES: Comments must be submitted on or before March 29, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “Fee Schedule Rulemaking, 16 CFR Part 4.8, Project No. P122102” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/feeschedule>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex T), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3355.

SUPPLEMENTARY INFORMATION: The Commission has determined that it is necessary to update its fee schedule for provision of services to the public, which was last changed in 1998. Since then, the Freedom of Information Act (“FOIA”) was amended once in late 2007 by the Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. 110-175, 121 Stat. 2524 (“2007 FOIA Amendments”). The Commission proposes to change its fee schedule to implement the 2007 FOIA Amendments as appropriate. There have also been changes in technology and to the costs of providing services over the last decade, necessitating revisions to reflect both new and discontinued services that the FTC offers the public. The proposed changes will also be useful in providing additional notice to the public and to the FTC’s professional and administrative staff about the procedures governing how the agency responds to FOIA requests. The additional guidance will supplement and restate the information available at the FOIA page on the FTC website, <http://www.ftc.gov/foia/index.shtm>.

As required by the FOIA, the Commission seeks public comment on the proposed revisions to its fee regulations set forth in this document. *See* 5 U.S.C. 552(a)(4)(A)(i). In a separate document published in today’s FEDERAL REGISTER, the Commission has published final regulations to make other related administrative rule changes that do not require public comment. For example, those Rule amendments establish a new category of public record materials; provide additional contact information for the filing of initial FOIA requests; set out agency procedures for acknowledging the receipt of a request, the proper filing of a request, and the “cut-off” date for searches; and allow additional time to file FOIA appeals in unusual circumstances.

Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 29, 2013. Write “FOIA Fee Rulemaking, 16 CFR Part 4.8, Project No. P122102” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f). *See also* FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the

procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/feeschedule>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write FOIA Fee Rulemaking, 16 CFR Part 4.8, Project No. P122102 on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 29, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* 16 CFR 4.9(c).

Proposed Changes to Fee Regulation

The Freedom of Information Reform Act of 1986 (“FOIA Reform Act”) charged the Office of Management and Budget (“OMB”) with responsibility for promulgating, pursuant to notice and comment, guidelines containing a uniform schedule of fees for individual agencies to follow when promulgating their FOIA fee regulations. 5 U.S.C. 552(a)(4)(A)(i). On March 27, 1987, the OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines (“OMB Fee Guidelines”).² OMB issued guidance therein as directed but also concluded that issuance of a government-wide fee schedule was precluded by language of FOIA Reform Act requiring “each agency’s fees to be based upon its direct reasonable operating costs of providing FOIA services.” *See* 52 FR at 10015. The FOIA Reform Act mandated that agencies conform their fee schedules to these guidelines. The guidelines specifically direct that “[a]gencies should charge fees that recoup the full allowable direct costs they incur.” *Id.* at 10018

In Rule 4.8(a)(2), 16 CFR 4.8(a)(2), the Commission proposes to clarify that the term “duplication” includes the process of converting paper to electronic format (if requested by the requester and readily reproducible in that form). The Commission also proposes to clarify that allowable “direct costs,” like operator time, can be charged in all instances for commercial requesters, and in some instances for other types of requesters, but only after the amount actually converted from paper to electronic format exceeds the equivalent of 100 free pages that those requesters are entitled to receive under the OMB Guidelines.

In Rule 4.8(a)(3), 16 CFR 4.8(a)(3), the Commission proposes to add that review costs

² Office of Management and Budget: The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987).

are recoverable even if a record ultimately is not disclosed.

In Rule 4.8(a)(4), 16 CFR 4.8(a)(4), the Commission proposes to expand the definition of “direct costs” to incorporate pre-existing guidance from the OMB Fee Guidelines.

In Rule 4.8(b), 16 CFR 4.8(b), the Commission proposes to clarify that the fee charges set out in this section apply unless the requester establishes the applicability of a public interest fee waiver pursuant to § 4.8(e). The Commission also includes a chart summarizing the types of charges that apply to requester categories set out later in paragraphs (b)(1)-(b)(3).

In Rule 4.8(b)(2), 16 CFR 4.8(b)(2), the Commission proposes to amend the definitions for “representative of the news media” to implement the definition codified at 5 U.S.C. 552(a)(4)(A)(ii) by the 2007 FOIA Amendments. The Commission also proposes amending the definition of “educational institution” to more closely comport with Section 6(h) of the 1987 OMB Fee Guidelines: a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research of the institution, not an individual goal.

In Rule 4.8(b)(4), 16 CFR 4.8(b)(4), the Commission proposes revising the waiver of small charges section from those that do not exceed \$14 to those under \$25. Under the Federal Claims Collection Standards, 31 CFR 900-904, the Commission is obligated to refer FOIA fee debts that are overdue more than 180 days to the Financial Management Services (“FMS”) at the Department of Treasury. However, FMS does not typically pursue repayment for any debts that are under \$25 except for certain situations set out by FMS regulations.³ The Commission

³ See 31 CFR 285.12(c)(4), which reads as follows:

believes that the FTC should not charge any fees that the Department of Treasury will not attempt to collect.

In Rule 4.8(b)(5), 16 CFR 4.8(b)(5), the Commission proposes to clarify that this section's reference to materials that are not subject to the fee provisions of Rule 4.8 and that are available without charge are public record materials.

Rule 4.8(b)(6), 16 CFR 4.8(b)(6), contains the Commission's uniform schedule of fees that applies to records held by all constituent units of the Commission and to all requests made for materials on the public record and those made under the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. Periodically, the Commission reviews that rule to update those fees to reflect its current costs. The Commission proposes changes to update the schedule to reflect current costs and types of products and services provided

The Commission proposes adding new fee categories for the provision of compact discs ("CDs"), DVDs, and videotape cassettes, which are now used more extensively in sending data to FOIA requesters. The Commission has also discontinued providing most microfiche services, and the section relating to those fees is being revised to reflect this. For example, the Commission no longer converts paper records into electronic fiche format. The Commission's Consumer Response Center no longer converts microfiche records into paper. However, the Commission's Library currently has two microfiche/film reader/printers, and patrons may photocopy or print from these machines at the rate of \$0.14 per page.

Agencies are not required to transfer to FMS debts which are less than \$25 (including interest, penalties, and administrative costs), or such other amount as FMS may determine. Agencies may transfer debts less than \$25 to FMS if the creditor agency, in consultation with FMS, determines that transfer is important to ensure compliance with the agency's policies or programs.

Most of the microfiche/film files are stored and managed off-site by two contractors, Iron Mountain Archival Services and the National Archive and Records Administration's Washington National Records Center. The fees that the FTC charges the public for the conversion of such files into paper are in accordance with the terms of the FTC's two contracts, which were awarded after open and transparent General Services Administration bidding processes. The OMB Fee Guidelines encourage agencies "to contract with private sector services to locate, reproduce and disseminate records in response to FOIA Requests when that is the most efficient and least costly method. When doing so . . . agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks." *See* 52 FR at 10018. The Commission has determined that the fees incurred by the requesters are no greater for the services that Iron Mountain performs than they would be if the Commission staff itself performed these tasks.

Additionally, the Commission proposes to update fees for Express Mail delivery services and certification services to reflect current actual costs. Section 7(e) of the OMB Fee Guidelines indicates that "[n]either the FOIA nor its fee structure cover these kinds of services [and] [a]gencies should recover the full costs of providing services . . . to the extent that they elect to provide them." *See* 52 FR at 10018. Postal Service rates tend to change frequently. Therefore, the proposed rule would no longer list a specific Postal Service rate, but would instead state that current U.S. Postal Service market rates will be charged for Express Mail delivery. Fees for certification services, which authenticate documents as being true and proper Commission records, would be raised under the proposed rule to cover the increased costs of

Agencies may combine individual debts of less than \$25 owed by the same

attorney and clerical staff time in preparing such records for certification.

In Rule 4.8(b)(6), 16 CFR 4.8(b)(6), the Commission proposes further clarifying that duplication costs include the quarterly hour time that staff spends operating the duplicating machinery that converts paper to electronic format by scanning or other means. Commercial requesters are charged the direct costs associated with converting paper copies to electronic format. Other categories of requesters are charged the direct costs after they receive records equal to 100 pages of paper (*e.g.*, a computer disc with 100 pages of information).

In Rule 4.8(b)(7), to be codified as 16 CFR 4.8(b)(7), the Commission proposes inserting the FOIA statutory mandate that certain search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a FOIA request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and 16 CFR 4.11(a)(1)(ii).

In Rule 4.8(c)-(e), 16 CFR 4.8(c) through (e), the Commission proposes to add language that merely clarifies the information needed to determine fees, to establish an agreement to pay fees, and the standards for public interest fee waivers. In particular, the Commission proposes to clarify in Rule 4.8(c), the procedures for appealing fee category and fee waiver determinations.

In Rule 4.8(d), 16 CFR 4.8(d), relating to procedures for establishing an agreement to pay fees, if the agreement is absent and the estimated fees exceed \$25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed \$25.00 within 10 days from the date of the notification, the request will be closed.

debtor for purposes of meeting the \$25 threshold.

Lastly, the Commission proposes to revise Rule 4.8(k), 16 CFR 4.8(k), to reflect amendments made by the Debt Collection Improvements Act of 1996 (Pub. L. 104-134), which require agencies under the Federal Claims Collection Standards cited earlier to attempt to collect administratively established debts, such as FOIA fees, when bills are more than 30 days and up to 180 days past due. Also, the FCSS does not limit the agency's ability to pursue other authorized remedies such as alternative dispute resolutions and arbitration, and the Commission is including provisions for such remedial procedures. As previously noted, the Debt Collection Improvement Act of 1996 requires the Commission to forward all such debts, with certain exceptions, that are still unpaid after 180 days to the Department of Treasury for further debt collection efforts.

Proposed Change to Fee Section in Rule 4.11

There is a proposed new insert for Rule 4.11(a)(3)(i)(A)(3), which provides the explicit right to appeal fee waiver determinations and includes a clear deadline for filing the appeal.

The Commission believes that the proposed Rule amendments do not require an initial regulatory analysis under the Regulatory Flexibility Act because the amendments will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). Most requests for access to FTC records are filed by individuals, who are not "small entities" within the meaning of that Act, 5 U.S.C. 601(6), and, in any event, the economic impact of the rule changes on all requesters is expected to be minimal, if any. Moreover, these proposed rule amendments are matters of agency practice and procedure that are exempt from notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), which also exempts the proposed amendments from the analysis requirements of the Regulatory Flexibility

Act. Likewise, the proposed amendments do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501-520. The Commission nonetheless solicits comments on any economic and regulatory impact of the proposed rule; paperwork requirements, if any, that commenters believe the amendments are believed to impose upon private persons; and possible regulatory alternatives to reduce the amendments' economic impact, if any, while fully implementing the statutory mandate. The Commission will consider any such comments before promulgating the amendments in final form.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Amend § 4.8 by revising paragraphs (a)(2) through (4), (b) introductory text, (b)(2) through (6), by adding paragraph (b)(7), and by revising paragraphs (c) through (f) and (k) to read as follows:

§ 4.8. Costs for obtaining Commission records.

(a) * * *

(2) The term *duplication* refers to the process of making a copy of a document for the purpose of releasing that document in response to a request for Commission records. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation

such as magnetic tape or computer disc. For copies prepared by computer and then saved to a computer disc, the Commission charges the direct costs, including operator time, of production of the disc or printout if applicable. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. As set out in paragraph (b) of this section, certain requesters do not pay for direct costs associated with duplicating the first 100 pages.

(3) The term *review* refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the redaction or other processing of documents for disclosure. Review costs are recoverable from commercial use requesters even if a record ultimately is not disclosed. Review time includes time spent considering formal objections to disclosure made by a business submitter but does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term *direct costs* means expenditures that the Commission actually incurs in processing requests. Direct costs include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in paragraph (b)(6) of this section.

(b) *Fees.* User fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552(a) shall be charged according to this paragraph, unless the requester establishes the applicability of a public interest fee waiver

pursuant to paragraph (e) of this section. The chart summarizes the types of charges that apply to requester categories set out in paragraphs (b)(1) through (3) of this section.

Requester Categories	Fee Charged for All Search Time	Fee Charged for All Review Time	Duplication Charges
Commercial	Fee	Fee	Fee charged for all duplication
Educational, Non-commercial Scientific Institution, or News Media	No charge	No charge	No charge for first 100 pages
Other (General Public)	Fee after two hours	No charge	No charge for first 100 pages

* * * * *

(2) *Educational requesters, non-commercial scientific institution requesters, and representative of the news media.* Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages.

(i) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further the scholarly research of the institution and are not sought for a commercial or an individual use or goal.

(ii) A *non-commercial scientific institution* is an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry.

(iii) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase by or subscription by the general public or free distribution to the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the

journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would provide a solid basis for such an expectation, but the past publication record of a requester may also be considered in making such a determination.

(3) *Other requesters.* Other requesters not described in paragraphs (b)(1) or (2) will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge.

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request are under \$25.00.

(5) *Materials available without charge.* These provisions do not apply to recent Commission decisions and other public materials that may be made available to all requesters without charge while supplies last.

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Duplication:	
Paper to paper copy (up to 8.5" x 14").	\$0.14 per page

Converting paper into electronic format (scanning)	Quarterly hour rate of operator (Clerical, Other Professional, Attorney/Economist)
Electronic Services:	
Preparing electronic records and media	\$10.00 per qtr. hour
Compact disc (CD)	\$3.00 per disc
DVD	\$3.00 per disc
Videotape cassette	\$2.00 per cassette
Microfilm Services:	
Conversion of existing fiche/film to paper	\$0.14 per page
Other Fees:	
Certification	\$25.00 each
Express Mail	U.S. Postal Service Market Rates

Records maintained at Iron Mountain or Washington National Records Center facilities (records retrieval, refiling, et cetera)	Contract Rates
Other Services as they arise	Market Rates

Note to paragraph (b)(6): *Search, review and duplication fees.* Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review purposes, as well the costs of operating duplication machinery such as converting paper to electronic format (scanning), are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review or duplication procedure belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326-2222.

(7) *Untimely responses.* Search fees will not be assessed for responses that fail to comply with the time limits in which to respond to a Freedom of Information Act request, provided at 5 U.S.C. 552(a)(4)(A)(viii) and § 4.11(a)(1)(ii), and if there are no unusual or exceptional circumstances, as those terms are defined by 5 U.S.C. 552(a)(6) and §4.11(a)(1)(ii). Duplication

fees will not be assessed for an untimely response, where there are no unusual or exceptional circumstances, made to a requester qualifying for one of the fee categories set forth in paragraph (b)(2) of this section.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for non-commercial purposes or whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The deciding official (as designated by the General Counsel) will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester. *See* § 4.11(a)(3)(i)(A)(3) of this chapter for procedures on appealing fee category and fee waiver determinations.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver as set forth in § paragraph (e) of this section shall specifically indicate that the requester will either:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request; or

(ii) Pay such fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached.

(2) Each request that contains an application for a fee waiver shall specifically indicate whether the requester, in the case that the fee waiver is not granted, will:

(i) Pay, in accordance with paragraph (b) of this section, whatever fees may be charged for processing the request;

(ii) Pay fees up to a specified amount, whereby the processing of the request would cease once the specified amount has been reached; or

(iii) Not pay fees, whereby the processing of the request will cease at the point fees are to be incurred in accordance with paragraph (b) of this section.

(3) If the agreement required by this section is absent, and if the estimated fees exceed \$25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees. If the requester does not respond to the notification that the estimated fees exceed \$25.00 within 10 calendar days from the date of the notification, the request will be closed.

(e) *Public interest fee waivers.* (1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The deciding official (as designated by the General Counsel) will rule on applications for fee waivers. To appeal the deciding official's determination of the fee waiver, a requester must follow the procedures set forth in §4.11(a)(3).

(2) *Standards.* (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if the requester establishes that:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; (e.g., by providing specific information about the requester's expertise in the subject area of the request and about the ability and intention to disseminate the information to the public); and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. This requirement shall be met if the requester shows either:

(A) That the requester does not have a commercial interest that would be furthered by the requested disclosure; or

(B) If the requester does have a commercial interest that would be furthered by the requested disclosure, that the public interest in disclosure outweighs the identified commercial interest of the requester that the disclosure is not primarily in the requester's commercial interest.

(f) *Searches that do not yield responsive records.* Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

* * * * *

(k) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134).* The Commission will pursue repayment, where appropriate, by employing the provisions of the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards (FCSS), 31 CFR 900-904, and any other applicable authorities in collecting unpaid

fees assessed under this section, including disclosure to consumer reporting agencies and use of collection agencies. The FCSS does not limit the agency's ability to pursue other authorized remedies such as alternative dispute resolution and arbitration.

3. In § 4.11, add paragraph (a)(3)(i)(A)(3) to read as follows:

§4.11. Disclosure requests.

(a) * * *

(3) * * *

(i) * * *

(A) * * *

(3) If an initial request for a fee waiver or reduction is denied, the requester may, within 30 days of the date of the letter notifying the requester of that decision, appeal such denial to the General Counsel. In unusual circumstances, the time to appeal may be extended by the General Counsel or his or her designee.

* * * * *

By direction of the Commission, Chairman Leibowitz not participating.

Donald S. Clark
Secretary.

